
(2019) 03 CHH CK 0133

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 1146 Of 2018

Pradeep Kumar Soni @ Munna

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 403

Code Of Criminal Procedure, 1973 — Section 155(2)

Citation : (2019) 03 CHH CK 0133

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Surfraj Khan, Ghanshyam Patel

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is for quashing a criminal case No. 1760/2018 pending before the Court of JMFC, Bilaspur for which an Istagasa has been filed under Section 403 IPC. It is contended on behalf of the petitioner that on 06.04.2018 a raid was conducted in the shop of the petitioner and certain goods were seized on the ground that the said property has been kept for misappropriation. Subsequently, it is stated that an Istagasa was prepared under Section 403 IPC and before conducting the enquiry permission was not obtained which was necessary under Section 155 (2) Cr.P.C.

3. The reply of the State is completely silent on this issue. It is not clear whether permission has been obtained or not? and during the course of argument, learned State counsel is also unable to satisfy this Court whether such permission was obtained under Section 155 (2) Cr.P.C. or not.

4. Section 155 sub-section (2) of the Cr.P.C. reads as under:-

"155. Information as to non-cognizable cases and investigating of such cases. - (1) xxx xxx xxx (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

5. In view of the aforesaid facts as has been held by the Karnataka High Court in the matter of Siddanagouda Vs. State of Karnataka (1998 CRI. L.J. 2162) and also by the High Court of M.P. in the matter of Arun Kumar Bhargava Vs. State of M.P. {2001(1) M.P.L.J. 691} that the police cannot investigate the non-cognizable offence and any investigation if is made without the permission of the competent Magistrate as contemplated by Section 155 (2) Cr.P.C. would be illegal. The subsequent permission of competent Magistrate obtained by police officer would not validate the illegal investigation that was carried out.

6. Under the circumstances, since the reply of the State is completely vague and not clear whether to enquire the non-cognizable offence, the permission was obtained by the State before filing the Istagasa under Section 403 IPC, consequently, the proceedings of criminal case No.1760/2018 pending before the JMFC, Bilaspur, are hereby quashed. It is further directed that the goods so kept may be released and the petitioner may file the bills of the said goods before the police.

7. Accordingly, the petition stands allowed.